

OGC Has Reviewed

25 May 1955

MEMORANDUM FOR: Acting Chief, Transportation Division/OL

SUBJECT : Queries with Regard to the Agency Interest
in Carrying of Property Damage and Public
Liability Insurance by Agency Drivers

REFERENCE : Your Memorandum, Dated 19 May 1955

1. In your memorandum you cited a memorandum from this Office, dated 5 May 1955, in which we suggested that Agency drivers carry public liability and property damage insurance against the contingency of ever being sued as private individuals for acts of negligence committed in line of duty. You stated that this memorandum raised the following questions and requested us to answer them:

a. Would this Agency legally be within its rights to require that all drivers carry Property Damage and Public Liability Insurance?

b. Would the cost of such insurance be reimbursable and, if so, under what circumstances?

c. Would failure on the part of drivers, presently employed, to obtain such insurance constitute grounds for discharge or transfer to other duties?

2. Each of these questions seems to proceed on the assumption that the federal government has some interest in the tort liability of its agents and representatives exclusive of that liability as it was assumed under the Federal Tort Claims Act (60 Stat. 842, 28 U.S.C. 1291 (1946)). Such is not the case. It is a general rule of law that the sovereign cannot be sued without its consent for the negligence or for any other cause. The Congress has created a departure from this rule with the enactment of the Federal Tort Claims Act. But this departure is a narrow one. And it follows from the general principle stated that the federal government has no interest in the negligence of its agents or representatives for which it has not assumed liability under the Act. Such negligence was, and still is, the responsibility of the individuals concerned. It was this consideration which prompted us to suggest that drivers of this Agency might wish to carry insurance lest they be sued in their private capacities for acts of negligence in line of duty and have to pay out of their own pockets. However, we made the suggestion from the standpoint of the employees, not from the standpoint of the government.

3. From the above it follows that your questions all are answered in the negative. In view of the Justice Department policy cited in our previous memorandum and the general principles of federal liability stated above, the Agency drivers may wish to carry insurance. However, whether or not they so do is their business, not the government's.

4. Paragraph 2 of your memorandum requested a "brief resume of typical line of duty incidents in which an employee could be personally sued and not be entitled to receive legal assistance under the provisions of the Federal Tort Claims Act". Please understand that the Federal Tort Claims Act does not provide for legal assistance by the United States in these situations. Such assistance is furnished by the Justice Department pursuant to their circular 41-22, dated 11 May 1950. The Act has to do with federal liability, if any, not with legal assistance. As I believe I discussed with you over the telephone, a list of such "typical incidents" could be as long and as varied as an index of acts of negligence; and I suggested that we furnish you with a statement of principles on the basis of which you could take whatever action you wished under the circumstances. You agreed to this. In answer to your specific query as to those incidents in which legal assistance will not be furnished, it will not be furnished in that situation in which the person injured also is a federal employee and is injured in line of duty. In these circumstances the Justice Department will not take sides in the controversy, i.e. furnish legal assistance to either party. Generally speaking a federal employee who causes injury to another is always susceptible to private suit. As a practical matter, however, the suit will be brought against the government under the Federal Tort Claims Act if at all possible as, obviously, there is a better chance of recovery from the government than from most private individuals. However, suit might be brought against an individual if the plaintiff has a personal grudge against the individual or is not aware of the provisions of the Federal Tort Claims Act. Finally, there is a consideration that the sole remedy against the government for a federal employee injured in line of duty is under the Federal Employees' Compensation Act (39 Stat. 742, 5 U.S.C.A. 757(b) (1946)), not under the Federal Tort Claims Act.

5. To net out the above an Agency driver would be subject to private suit in that situation in which either (a) while acting in line of duty, he negligently injured an outsider who chose to sue him rather than the government under the Federal Tort Claims Act, or (b) while acting in line of duty, he negligently injured another federal employee who chose to sue him in addition to, or in lieu of, claiming compensation under the Federal Employees' Compensation Act. We add that both of these are comparatively rare circumstances. We suggest that you make the substance of this, and our previous, memorandum known to your drivers and leave it up to them as to whether or not they wish to insure.

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Office of General Counsel